

UNITED STATES COURT OF APPEALS April 21, 2011

FOR THE TENTH CIRCUIT Elisabeth A. Shumaker
Clerk of Court

EMMANUEL AZZUN,

Plaintiff-Appellant,

v.

KANSAS DEPARTMENT OF
HEALTH AND ENVIRONMENT,

Defendant-Appellee.

No. 10-3330
(D.C. No. 5:09-CV-04144-SAC)
(D. Kan.)

ORDER

Before **MATHESON, McKAY**, and **EBEL**, Circuit Judges.

Emmanuel Azzun, proceeding pro se, has filed a motion to “withdraw and dismiss” his appeal, which we construe as a motion for voluntary dismissal under Fed. R. App. P. 42. Dr. Azzun also mentions in his motion that he and the defendant agreed to seal this case and all other cases involving him and his family. This reported agreement of the parties to seal the case does not entitle Dr. Azzun to such relief. *See R&G Mortgage Corp. v. Fed. Home Loan Mortgage Corp.*, 584 F.3d 1,12 (1st Cir. 2009) (sealing requires more than agreement among the parties). Rather, it is within the court’s discretion to grant a motion to seal. *Cf. Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 599 (1978) (“[T]he decision

as to access [to judicial records] is one best left to the sound discretion of the trial court, a discretion to be exercised in light of the relevant facts and circumstances of the particular case.”). On January 21, 2011, this court denied Dr. Azzun’s motion to seal his case. To the extent that the portion of Dr. Azzun’s motion for voluntary dismissal that refers to sealing can be construed as a request for reconsideration of the denial of his motion to seal, we DENY that request.

We GRANT the motion to voluntarily dismiss the appeal. Accordingly, this appeal is DISMISSED.

Entered for the Court,

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a horizontal flourish line.

ELISABETH A. SHUMAKER, Clerk